

# BOARD OF ZONING APPEALS

## MINUTES

6:30 PM

February 20, 2013

City Council Chambers

**MEMBERS PRESENT:** Bernie Bossio, Tom Shamberger, and Jim Shaffer

**MEMBERS ABSENT:** Leanne Cardoso, George Papandreas

**STAFF:** Christopher Fletcher, AICP

**I. CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

**II. MOTION TO AMEND THE ORDER OF THE AGENDA:** Shaffer moved to amend agenda item "A" under NEW BUSINESS and adjust to be the last agenda item "D" under NEW BUSINESS; seconded by Shamberger. Motion carried unanimous.

**III. MATTERS OF BUSINESS:**

Minutes for the January 16, 2013 Hearing. Shamberger moved to approve as presented; seconded by Shaffer. Motion carried 3-0.

**IV. NEW BUSINESS:**

**A. CU13-04 / Mundell & Associates, LLC, / 22 Walnut Street:** Request by Robert M. Mundell, of Mundell & Associates, LLC, for conditional use approval for "Multi-family Dwelling" use located at 22 Walnut Street; Tax Map 26A, Parcel 16; B-4, General Business District.

Fletcher read the Staff Report stating the petitioner seeks to convert the last remaining nonresidential use within the existing mixed-use building at 22 Walnut Street to an apartment. Addendum A of this report illustrates the location of the subject site.

According to the petitioner's application, the building currently contains six apartment units and a vacant commercial space, which was most recently occupied by a "Barber Shop / Beauty Salon" use call *Portfolio, LLC*. In speaking with the petitioner, Staff understands that efforts have been made to maintain the building as mixed-use. However, demand and market interest in the building has increased for apartment units.

Because the building contained nonresidential uses, the apartments were considered "Mixed-Use Dwelling" uses, which are permitted by-right in the B-4 District. With the elimination of the nonresidential use with the building, the seven (7) apartments will be considered "Multi-Family

Dwelling” uses, which requires conditional use approval by the Board of Zoning Appeals. (see Article 1329.02 and Table 1331.05.01 of the Planning and Zoning Code)

The petitioner was present at the meeting, and had no additional information to submit to the Board.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher specified the Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval of Case No. CU13-04 as requested without conditions.

Shaffer made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The change in use of the subject space within the petitioner’s building from a “Barber Shop / Beauty Salon”, “Personal Services Establishment,” or “Professional Services Establishment” use to a “Multi-Family Dwelling” use should not result in a measurable change in traffic generated from the subject site.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The building will meet all related building and fire codes.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The granting of the conditional use will not result in an addition to the existing footprint or height of the building and therefore not affect existing light distribution and air flow patterns.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The petitioner seeks to repurpose existing space within the subject building and therefore not affect the existing density or intensity of the site.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The area should be less congested if the current commercial use area is converted into an apartment. The building occupancy will be similar to that of other buildings in the area that have experienced similar reuses of former commercial spaces into apartments as a demand for student housing in the downtown increases.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The proposed request should not require public infrastructure, utilities, or service beyond that which is currently available.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The change in use of the subject space within the petitioner's building is similar to that of other buildings in the area that have experienced similar reuses of former commercial spaces into apartments to meet present market demands and related values.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

Market interest in the subject property has shifted from mixed-use to apartments, which appears to be attributed, in part, to the subject property's location, access, and limited visibility that are customarily desired by nonresidential tenants.

Shamberger moved to approve conditional use petition CU13-04 as requested without conditions; seconded by Shaffer. Motion carried unanimously.

Bossio reminded the petitioner that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- B. V13-02 / Jones / 311 Grant Avenue:** Request by Dow Jones for variance relief from Article 1365.09(C) as it relates to the surfacing and drainage of an off-street parking area at 309, 311, and 317 Grant Avenue; Tax Map 20, Parcels 26, 27, and 28; R-3, Multi-Family Residential District.

Fletcher read the Staff Report stating the petitioner seeks to develop off-street parking crossing three properties to serve the eight (8) registered rental units situated thereon. Addendum A of this report illustrates the location of the subject site.

The Planning and Zoning Code provides that all off-street parking areas for four or more automobiles shall be developed in accordance with the dimension, layout, design, surfacing, and drainage standards set forth in Article 1365.09 (except one- and two-family dwellings, agricultural, and rural uses).

Article 1369.09(C)(1) "Surface and Drainage" provides the following:

"All open off-street parking areas shall be surfaced with an all-weather, dust-free concrete or asphalt material, and shall be maintained in good condition and free of weeds, dirt, trash and debris; except that, a gravel surface may be used for a period not exceeding six months after the date of granting the Certificate of Occupancy where ground conditions are not immediately suitable for permanent surfacing as specified above."

The petitioner seeks variance relief from the paving-related requirements so that gravel parking may be developed instead, which requires variance approval by the Board of Zoning Appeals.

The alley from which the proposed gravel parking spaces will be accessed from is currently gravel and not improved with asphalt or concrete paving. Staff confirmed with the City Engineer that the paving of the subject alley is not currently included in the City's capital improvement program.

Bossio recognized the petitioner Mr. Dow Jones who stated that he had no additional information for the Board.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher noted that Staff received an email communication dated February 6, 2013 from Mr. David Kelley, property owner of 314 and 316 Grant Avenue, who stated that he is in favor of the request and asked for approval to be granted by the Board.

Fletcher specified that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of V13-02 as requested with the following conditions:

1. No later than (60) days following the variance relief granted herein, the petitioner shall:
  - a. Cause to be prepared, to the satisfaction of the Planning Division, and execute a declaration of zoning compliance agreement obligating the owner or owners of the three (3) subject parcels to surface the subject gravel parking area with an all-weather, dust-free concrete or asphalt material to the satisfaction of the City Engineer no less than 180 days following the paving of the alley from which the subject parking area is accessed from;
  - b. Said agreement and obligation shall be recorded at the Monongalia County Courthouse and run with the deeds of record for each of the three (3) subject parcels; and,
  - c. The petitioner shall submit to the Planning Division a certified copy of the recorded agreement. In the event the condition No. 1 above is not fulfilled, the variance relief granted herein shall become null and void without prior notification and the petitioner and/or owner or owners of the subject realty shall within 180 days following the date of the Board's decision herein comply with all related parking development standards set forth in Article 1363 of the City's Planning and Zoning Code. Failure to comply with all related parking development standards within said period shall result in the initiation of enforcement action under Article 1393 of the City's Planning and Zoning Code.

Mr. Bossio noted that the property comes from a gravel access on to a gravel area and paving would not be needed because the area is consistent.

Shamberger stated that other property owners have done similar things on alley ways with the provision that the area is paved if the access area becomes payment. He asked that the petitioner be made aware of the provision, and Mr. Bossio stated that it would be included in the conditions within the Staff Report.

Shamberger made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shaffer. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The alley from which the proposed parking area will be accessed from is currently gravel and not improved with asphalt or concrete.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that the majority of the parking areas containing four or more parking spaces within the immediate area and the Sunnyside Neighborhood are currently gravel; Particularly the large parking lot serving the McLane Manor development opposite the alley from the petitioner's subject site.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The petitioner's plan to gravel the proposed parking area should not adversely impact nor damage the gravel alley from which the parking area will be accessed from and reasonable conditions can be included in the granting of the variance to ensure that the subject gravel parking area is paved as otherwise required in the event the alley is improved with asphalt or concrete surfacing.

Finding of Fact No.4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The availability of on-site parking within the Sunnyside Neighborhood appears to be a contributing factor to existing on-street parking congestion trends. The petitioner's efforts to create new off-street parking supply while recognizing the fact that the alley from which the proposed parking area will be accessed from is currently gravel and not surfaced in asphalt or concrete. The existing land use will remain the same but perhaps improved by virtue of creating on-site parking where none currently exists. The nature of this variance relief request cannot contribute to nor mitigate traffic congestion that may exist on neighboring roadways; however it should serve to aid, in some measure, in relieving on-street parking congestion.

Shaffer moved to approve variance petition V13-02 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Mr. Jones that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- C. **V13-03 / Ronald McDonald House / 841 Country Club Road:** Request by Brenda Stipanovich of Fastsigns, Inc., on behalf of Ronald McDonald House Charities, for variance relief from Article 1369.09 as it relates to signage at 841 Country Club Road; Tax Map 11, Parcel 90; R-3, Multi-Family Residential District.

Fletcher read the Staff Report stating the petitioner seeks to erect a wall sign for Ronald McDonald House Charities, located at 841 Country Club Road. Addendum A of this report illustrates the location of the subject site.

For business uses in residentially zoned districts, Article 1369.09(A)(1) provides a maximum sign area of 0.15 square feet per linear foot of lot frontage on the primary street. According to Tax Map 11, the subject site has approximately 112 feet of frontage along Country Club Road. The maximum sign area would therefore be 18.8 square feet.

The petitioner's proposed wall sign is 56 square feet, which  $3 \frac{1}{3}$  times the maximum area standard and requires a variance of 39.2 square feet.

Article 1369.08(B) provides the following:

- (1) Sign faces shall be opaque;
- (2) Signs may not be internally illuminated, except for neon signs; and,
- (3) Signs shall be made of wood; sculpted "sign foam"; ornamental metals such as bronze, brass, copper, etc.; painted aluminum panels, stone or masonry (with concrete blocks being covered with stucco); and have painted or vinyl letters attached to window and doors.

The proposed sign is internally illuminated with a transparent synthetic polymer face, which requires variance relief.

The extent of the variance could be reduced by orienting the proposed sign vertically rather than horizontally. In other words, portions of the sign face could be eliminated to the right and left of the logo while not impacting the area of the sign's copy.

Bossio recognized the petitioner's representative, Brenda Stipanovich whose residential address is 13 Lower Chalan Lane of Uniontown, Pennsylvania. Ms. Stipanovich stated that she was asked by the Director of the Ronald McDonald House to create a sign that would make the building more visible to the public and to the patients and families that are utilizing the service. She had initially designed the sign as an 8 X 7 and understands that a variance is required for height, width, square footage and frontage. However, the sign was designed with the vision that a critically ill child would be able to see the building from their hospital window and know where their parents were staying at night by seeing the big red sign. Therefore they wanted the sign to be large and visible from the distance of the hospital.

Shamberger noted that the sign would serve two purposes. People traveling from out of town could locate the building easier and the sign would also provide clear visibility when walking from the hospital to the Ronald McDonald house at nighttime.

Stipanovich agreed and noted that currently no wall signage exists and people are having a hard time locating the building, even in the daytime hours.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined).

Shaffer made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

It appears that many of Ronald McDonald House guests have family members or friends staying or receiving medical treatment at West Virginia University Hospitals. The proposed area of the sign appears to be appropriately sized to enhance guest/patient/client recognition of the facility and its location given its distance and visibility from the hospital campus.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be a number of properties within the area that have large illuminated signs attached to the building, such as WVU Hospitals and Mylan Puskar Stadium.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed sign will only face and be visible from an apartment building across the street behind which is West Virginia University Hospital’s expansive parking lot. Additionally, the facility is located at the end of Country Club Drive, which leads into the hospital and stadium campuses.

Finding of Fact No.4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed sign should not alter the character of the facility that has been in place for a number of years nor diminish the value of adjacent buildings within an area that includes large illuminated signs attached to WVU Hospitals and Mylan Puskar Stadium buildings. The nature of the variance relief requested cannot contribute to nor mitigate existing traffic congestion.

Shamberger moved to approve variance petition V13-03 as requested with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Ms. Stipanovich that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- D. CU13-03 / Leech / 206 Spruce Street:** Request by Douglas Leech for a conditional use approval for "Lodging or Rooming House" use located at 206 Spruce Street; Tax Map 29, Parcel 18; B-4, General Business District.

**NOTE:** A transcript was commissioned by the City of Morgantown and prepared by Faye Lehman of DepoTran for the portion of this hearing pertaining to Agenda Item D. CU13-03 / Leech / 206 Spruce Street; specifically, the transcription begins at Chairman Bossio's introduction of the agenda item and concludes immediately following the Board's decision. Said transcript is attached hereto and made a part hereof.

## **V. OTHER BUSINESS:**

- A.** Public Comments (matters not on the agenda): James Giuliani of 256 Prairie Avenue stated that he feels the actions of the board were superficial. Bossio reminded Mr. Giuliani that public comments are only for matters that are not on the agenda. Giuliani said he would speak on general matters and stated that he has questions with how case CU13-03 was operated. He noted that the application was submitted after the deadline and the case shouldn't have been an agenda item for the February BZA Hearing. He also questioned the "Findings and Facts" portion of the application, as he noted they are usually discussed one at a time prior to making a decision. Giuliani stated that many errors and deficiencies were made and believes the Board should have tabled the request.

Bossio reiterated that this public comment portion of the meeting is to discuss items that are not on the agenda. Mr. Giuliani continued with his position that case CU13-03 was not handled properly and conditions should have been stated on the petition but was not done so because Staff was afraid to violate the fair housing act.



Bossio asked the Morgantown Police Officer present to escort Mr. Giuliani from the Chambers resisted and Mr. Giuliani and directed to sit outside of the Chambers.

Bossio recognized John Lambertson of 310 Wilson Avenue who asked if the Staff Reports had to be posted online at a certain time prior to the Hearing. Fletcher explained that there are no specific rules to posting staff reports online, although it is preferred that they are completed and posted on the City's website the Friday prior to the Hearing. He explained that the staff report for CU13-03 required additional time and research to complete. The staff report, with the exception of Addendum C that contained staff recommended revisions to the petitioner's findings of fact, was posted on the City's website last Friday with an insert noting that Addendum C would be distributed at the hearing this evening. After receiving a complaint that the complete staff report would not be made available prior to the hearing this evening, Fletcher noted that Addendum C was completed yesterday and the complete report posted on the City's website yesterday.

- B.** Staff Comments: Fletcher explained that state law requires the Board of Zoning Appeals to make Finding and Facts based on conclusions of law. The City of Morgantown has put the burden of demonstrating the merit back on the petitioner. Fletcher likes how the City executes the findings and fact by having the petitioner go through the thought process and demonstrate the merit. Staff does coach the petitioner by telling them to use third person when completing the Findings and Facts, however, the course of deliberations and final decisions are those of the Board Members. Fletcher offered for Staff to do research and then provide the Board with a response in terms of a conditional use going with the property right or if it would be transferrable. Shamberger and Bossio felt that was a good idea and the Board would benefit from knowing more about conditional uses and property rights.

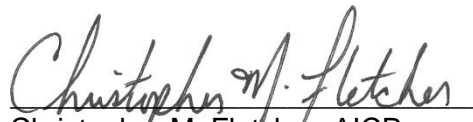
Fletcher stated that the 2012 annual report was presented to the City Council by the City Manager on 02/19/2013. Fletcher noted that the average tenure of the BZA is 30.6 years.

**VI. ADJOURNMENT: 11:00 PM**

MINUTES APPROVED:

May 15, 2013

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP